HIGH COURT OF DELHI : NEW DELHI

W.P(C) 6898 OF 2001

Judgment reserved on: October 11, 2007

Judgment delivered on: December 19 , 2007

Ashok Kumar .....Petitioner
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Through: Mr. Naresh Kaushik, Mr. Satish Dayanandon and Mr. G.S. Pandey, Advocates.

versus

$ Commissioner of Police & Ors. .....Respondents
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Through: Ms. Anusuya Salwan, Advocate.

***CORAM:**
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.
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1. The petitioner was a Constable in Delhi Police and at the material time he was posted as personal orderly to one Assistant Commissioner of Police at IGI Airport. The petitioner was

charge-sheeted and the summary of allegation reads as follows:-

> "It is alleged against Const. Ashok Kumar No.481-A that on 7.7.97 while driving bus No.DL-1P-8227 under DTC,has jumped Red Light of W Point on way from ITO side and continued driving the bus rashly and dangerously causing danger to the life of the public in the presence of C.P Delhi. The bus was stopped at Sikandara Ropad Bus Stop. On receiving W.T message in Tilak Marg Circle from SI Karan Singh No.2376-D WT Operator of C.P.Delhi, ASI Parmanand Z.O. reached the spot and challaned Ashok Kumar s/o Shri Harbhajan Singh r/o F-19, Mandawali, Fazalpur, Delhi-92 the bus driver, and arrested him U/S 184 M.V.Act and later on released him on personal Bond. It was found that Ashok Kumar, bus driver is a Constable of Delhi Police and posted as personal orderly to Shri Sita Ram Mamgain, ACP/IGI Airport.
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> It is further alleged against Const. Ashok Kumar No.481-A that being a Govt. servant he engaged himself in other trade and undertaking employment in violation of Rule 15 of CCS(Conduct) Rules, 1964."

2. A departmental enquiry followed wherein two prosecution witnesses and five defence witnesses were examined. The Enquiry Officer on the basis of the evidence adduced before him concluded in his report dated 2.11.1997 that the charges stood proved against the petitioner. The Disciplinary authority concurred with the findings of the Enquiry Officer and proceeded to impose the penalty of dismissal from service against the petitioner

on 22.12.1997. The departmental appeal was also dismissed by the appellate authority while agreeing with the findings and the order passed by the Disciplinary Authority vide his order dated 19.3.1998. Even the Revisional Authority did not interfere and rather affirmed the orders of the Disciplinary Authority and the Appellate Authority vide his order dated 4.1.1999. That led to the filing of O.A. No.618/99 by the petitioner before the Central Administrative Tribunal, Principal Bench, New Delhi (for short `the Tribunal') which too has been dismissed by the Tribunal by its impugned judgment dated 10.7.2001. Challenging the same, the present petition has been filed.

3. The main thrust of the argument of the petitioner is that based on the same incident, namely that on 07.07.1997 the petitioner was found driving a bus being run under Delhi Transport Corporation which had jumped red light at W Point on way from ITO and was being driven rashly and dangerously causing danger to the lives of the public, the petitioner had been acquitted by the Criminal Court and consequently the petitioner could not be held guilty in the departmental proceedings. It is argued that the acquittal of the petitioner in the criminal court vide judgment dated 12.7.2000 is based on no evidence and consequently the petitioner could not be penalised on the basis of the departmental

enquiry. It is also argued that the extreme punishment of dismissal was not warranted in the facts of the present case since the petitioner had a clean service record prior to the incident in question. It is submitted that the petitioner has been subjected to the penalty of dismissal only on account of the fact that the enquiry was initiated at the behest of the Commissioner of Police since the incident is stated to have taken place in the presence of the Commissioner.

4. On the other hand, learned counsel for the respondent has opposed the petition and defended the order of the Tribunal. It is argued that the Tribunal has extensively dealt with all the submissions of the petitioner and there is no infirmity in the said order calling for interference by this Court in judicial review. Learned counsel for the respondent submitted that the denial of the incident by the petitioner is patently false, inasmuch, as, he had also furnished personal bond when he was caught at the site of the incident and that there would have been no occasion for him to furnish his personal bond if he was not so involved in driving the bus and that too dangerously.

5. Having considered the submissions of both parties, we are of the view that there is no merit in this petition and the same

deserves to be dismissed. The enquiry report of the Enquiry Officer is of 2.11.1997. By the time the petitioner was acquitted in the criminal case on 12.07.2000 the departmental proceedings had attained finality inasmuch as not only the order of penalty had been passed by the Disciplinary Authority but the departmental appeal and revisional proceedings had also been finalised. These proceedings were founded upon evidence led during the course of the departmental enquiry. A perusal of the findings of the departmental enquiry placed on record reveals that the same is based on cogent evidence. Four Pws were examined during the departmental proceedings. PW-1, Inspector Sanjeev Kumar TI, Delhi Cantt Traffic Police Delhi stated that on 7.7.1997 he was posted as TI, Tilak Marg Circle. On receiving WT message from CP, Delhi he had detailed ASI Parmanand Z.O to go to the spot who challaned Constable Ashok Kumar under Sections 184 & 119/177 of the Motor Vehicles Act. Enquiries had revealed that the petitioner, Ashok Kumar was a constable of Delhi Police and posted as personnel orderly to Sh. Sita Ram Mamgain, ACP/Palam. Constable Ashok Kumar was arrested under Section 184 of the Motor Vehicles Act and later released on personal bond. PW-2 SI Karan Singh stated that he was the wireless operator to the Commissioner of Police, Delhi. On 7.7.1997 at 6.30 a.m the

Commissioner of Police was proceeding to his residence while the car of the Commissioner halted at W Point on Mathura Road on account of traffic red light. A bus came from Bahadur Shah Zafar Marg, Tilak Bridge Side at high speed and crossed the red light to proceed towards Sikandra Road. The Commissioner of Police ordered to intercept the bus which was intercepted on Sikandra Road. The driver was asked to come down and to be produced before the Commissioner. After some conversation between the Commissioner and the driver, the Commissioner ordered PW-2 to give a wireless message to the traffic control room to send the TI or Z.O to Sikandra Road and that PW-2 complied with the orders of the Commissioner. The Commissioner left the PSO on the spot and proceeded to his residence. The Commissioner informed PW-2 that the driver was a Constable of Delhi Police and also directed PW-2 to give full details in writing. After dropping the Commissioner at his residence, PW-2 went to Tilak Marg Circle where the Z.O informed that the driver, Constable Ashok Kumar, who was posted as orderly to Sh. Mamgain ACP was a police Constable. During the enquiry, PW-2, identified Constable Ashok Kumar as the person who was driving the bus. SI Shyamlal appeared as PW-3 who was posted as PSO with the Commissioner of Police and was a witness to the incident. ASI Parmanand Z.O Traffic Police appeared as PW-

4 who responded to the wireless message and reached the place of incident. He challaned the petitioner, Ashok Kumar who was produced before him by the staff under Sections 199 & 184 of the Motor Vehicles Act. The petitioner was arrested and released on personal bond. On enquiries, he learnt that Ashok Kumar was a constable in Delhi Police. The petitioner produced the owner of the bus, Shri Rajpal Singh as DW-1, who stated that he had engaged two drivers, namely Gurcharan Singh and Shammi and that Gurcharan Singh was on duty in the morning shift from 5.10 a.m to 1.40 p.m. He further stated that he had learnt of the incident and that he had never engaged any driver in the name of Ashok Kumar. He further stated that the driver Gurcharan had told him that two policemen in plain clothes were beating him when one Constable Ashok Kumar had intervened and Ashok Kumar was challaned instead of the driver Gurcharan.

6. Pertinently this witness was not present at the site nor did he make any complaint about the alleged police action against the driver Gurcharan. It is not even explained as to why Gurcharan was allegedly being beaten by two police men in civil clothes. Sh. Gurcharan appeared as DW-2 and made a statement on the lines of DW-1. Three other witnesses were also produced by the petitioner in the enquiry. The Enquiry Officer analysed the

statements made by the various witnesses as follows:-

> “The defaulter Constable through his defence witnesses has tried in vain to prove that at the time of incident driver Gurcharan Singh @ Gurdyal Singh was driving the bus. The bus was intercepted by the police on Sikandra Road. When the police was beating driver Gurcharan Singh @ Gurdyal Singh he intervened. The police left Gurcharan Singh and challaned him whereas he was not driving the bus. DWI Sh. Rajpal Singh has stated that he had employed Gurucharan Singh @ Gurudyal Singh as his driver on bus no. DLIP 8227 in the morning shift. During cross examination by the E.O. this DW stated that he was not present on the spot and could not say who was driving the bus at the time of incident. DW 2 Gurucharan Singh @ Gurudyal Singh stated that when he was being beaten by the police const. Ashok Kumar intervened and that the police took away const. Ashok Kumar after leaving him. He has not stated at any time that Const. Ashok Kukmar as beaten by the police whereas DW3 Mohd. Yaseen has stated that when the police officer stopped driver of the bus one passenger who was sitting in the bus intervened and the police officer left the driver and started beating that passenger. This contradiction in the statements of these DW's show that none of them was present on the spot. Moreover PW3 Mohd. Yasin during cross examination by the EO has stated that he was brought in the DE proceedings by the Constable Ashok Kumar. DW4 Sh. Johri Mal has stated that as per duty proforma of bus No. DLIP 8227 the name of driver Gurucharan Singh has been entered. He did not fill in the proforma. He was not present on the spot and could not state as to who was driving the bus. He

> only received the proforma in his office. DW-5 Ramesh Chand the conductor of the bus has stated that on 7.7.97 he came on bus No.DL1P 8227 as conductor for the first time and the driver gave his name as Gurucharan Singh, which he mentioned in the proforma. He could not confirm the identity of the driver. He did not know what happened who took the bus etc. From my above discussions it is clear that the defaulter constable has failed to prove his version.
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> From the statements of PW1 Inspector Sanjeev Kumar, PW-2 SI Karan Singh, PW-3 SI Shyam Lal, PW-4 ASI Parma Nand, Ex.PW 1/A and Ex.PW 4/A it has been established that defaulter constable Ashok Kumar No.481/A was driving private bus no.DL1P 8227 under DTC operation at 6.30 AM on 7.7.97 and that he being a government servant had engaged himself in the trade and undertaken employment other than his assigned duties in contravention of rule 15 of CCS (Conduct) Rules, 1964. The charge against const. Ashok Kumar no.481/a stands substantiated."

7. Therefore, it is evident that in the departmental enquiry proceedings, the findings were arrived at on the basis of evidence led by the petitioner and the department, whereas the acquittal in the criminal trial was on account of failure of the prosecution to lead any evidence whatsoever. Mere failure of the prosecution to lead evidence in the criminal trial which results in the acquittal of the accused does not lead to the conclusion that there is no evidence to proceed with the departmental enquiry when, as a

matter of fact, in the departmental enquiry evidence has in fact been led and it is on the basis of such evidence that the enquiry officer has given his findings.

8. From the aforesaid, it cannot be said that in the departmental enquiry, no germane or relevant evidence was produced in support of the charge or that the findings of the enquiry officer are perverse i.e. no reasonable person could have arrived at such findings on the basis of the evidence led in the enquiry proceedings. It is well settled that in the departmental enquiries, the rigour of proof is not the same as that in a criminal trial and in such enquiries the findings are arrived at on the preponderance of probabilities. It is equally well settled that the court, in judicial review cannot reappriciate the evidence and come to its own findings different from those of the Disciplinary Authority. It cannot therefore, be said that there was no evidence in the present case and that on account of the subsequent acquittal of the petitioner by the criminal court due to the failure of the prosecution to lead any evidence, it would vitiate the departmental enquiry and the consequent punishment.

9. Coming to the question of the quantum of punishment, we agree with the findings of the Tribunal that the charge against

the petitioner was grave enough to merit the punishment of dismissal. The petitioner was a police Constable and was unauthorisedly driving a private bus under DTC operation thereby engaging himself in a trade and undertaking employment other than his usual duties. He was driving the vehicle dangerously and had jumped the red light which had alerted the authorities leading to his being booked under the Motor Vehicles Act. It cannot be said that the punishment inflicted upon the petitioner, in the facts of the case is such as to shock the conscience of the Court. The petitioner belonged to a disciplined force created to enforce the law. However, it is seen that the petitioner had himself breached the law with immunity, putting the lives of the public at large in danger.

10. No other argument was raised by the petitioner. In view our aforesaid discussion, we find no merit in this petition and dismiss the same, leaving the parties to bear their respective costs.

VIPIN SANGHI
JUDGE

A.K.SIKRI
JUDGE

December 19, 2007
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